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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 805

THOMAS ROBINSON and ELAINE ROBINSON,
Petitioners,

against

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITIONERS' REPLY BRIEF

CHARLES W. MERRITT
GERARD A. NAVAGH
25 Broadway
New York 4, N. Y.

MAXWELL H. COHEN
11 South 7th Street
Stroudsburg, Pennsylvania
Counsel for Petitioners

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The brief of the respondent, Commissioner of Internal Revenue, in opposition to the granting of the writ of certiorari to the United States Court of Appeals for the Third Circuit, for the most part repeats and reiterates the contentions made by him below. In addition, he opposes the petition on the ground that for the first time in this proceeding a constitutional issue is being raised. Petitioners urge that this issue was presented below.

The Tax Court in its holding here stated that notwithstanding the decisions of the Courts of Appeals for the Fourth, Eighth and Tenth Circuits in the *Doak, Moran* and *Briggs* cases, it was unable to apply their

decisions to this case for it was of the opinion that the *Papineau, Doak* and *Moran* cases were correctly decided by it (Appendix, p. 15b). The Tax Court, in the final analysis, decided this case on authority of its holding in the *Papineau* case (Appendix, p. 11b). In its opinion, it expressly stated that the question involved in the *Papineau* case was whether all or any part of the value of meals and lodging which the taxpayer had at the hotel "represented income to him" (Appendix, p. 12b).

The taxpayers' brief in the Circuit Court of Appeals cited and quoted extensively from the Tax Court opinion in the *Papineau* case as did the amicus curiae brief of the American Hotel Association in that court. At page 6 of the American Hotel Association's brief, there appears a quote from the *Papineau* case to the effect that the items in question here can not "be reflected in income by any mirrors of accounting." There also appears in that quote the citation of the case of *Helvering* v. *Independent Life Insurance Co.*, 292 U. S. 371 as authority for the proposition that a sole proprietor can not "create income" in these cases. The cited authority involved the question as to whether or not certain uses of property constituted income within the meaning of the 16th Amendment (p. 379). In the dissenting opinion of Judge McLaughlin below, there is quoted the language of Judge Parker in the *Doak* case to the effect that "there is no reason why the value of such meals should be considered as income" (Appendix, p. 7b).

From the Tax Court through to this Court, petitioners' main reliance has been upon the *Papineau* case, the holding of which was to the effect that there is no

income in these cases and as we have shown, that case was predicated upon the decision of this Court in *Helvering* v. *Independent Life Insurance Co., supra.* In light of this record, it is difficult to see how the respondent, Commissioner of Internal Revenue, can contend that the question as to whether or not an income tax can be levied under the authority of the 16th Amendment is being raised for the first time in this Court.

Respectfully submitted,

CHARLES W. MERRITT
Counsel for Petitioners

Dated: May 26, 1960.